

BOOK ANNOTATIONS

The United Nations and Freedom of Expression and Information. Edited by Tarlach McGonagle and Yvonne Donders. Cambridge University Press, 2015, Pp xxiv, 508. \$167.95 (hardcover).

REVIEWED BY AMIRA ABULAFI

The development of the rights of freedom of expression and access to information at the United Nations is best characterized as a non-linear expansion that has consistently attempted to address a close set of themes. In *The United Nations and Freedom of Expression and Information*, Tarlach McGonagle and Yvonne Donders provide a comprehensive treatment of this evolution through a compilation of essays that closely analyze the development of these rights. In the first part of the book, the essays aim to provide a thorough treatment of these rights, in contrast to previous work that has largely focused on particular applications of these rights in treaties. Specifically, the essays evaluate the treatment of these rights across all U.N. documents, including founding U.N. documents, successive treaties, and institutions such as the United Nations Educational, Scientific and Cultural Organization (UNESCO). The second part of the book traces contemporary concerns by interpreting and applying these rights in light of modern day technological advances and global issues.

This work compiles essays from fourteen experts—a mixture of practitioners and academics, including three rapporteurs. Even though these separate essays explore conceptually distinct applications of the right to expression, the reader is anchored by a comprehensive introduction. The introduction, authored by McGonagle, a senior researcher at the Institute for Information Law at the University of Amsterdam, effectively highlights the main thematic points and gives the reader a guidepost through which to approach the essays.

Part I of the book provides the historical context for the contemporary understanding of the dual rights of freedom of expression and access to information in international law. As McGonagle notes in Chapter One, the development of these

rights is best described as having occurred in “leaps and bounds” as well as in “fits and starts.” The essays in Part I highlight this characterization by collectively showing that the interpretation of these rights has been simultaneously expanding, splintering, and restricting. A second and more substantive theme is the revelation that the structural changes in permissible restrictions on freedom of expression have mirrored changing societal norms and geopolitical tensions.

In Chapter Two, Michael O’Flaherty, Director of the E.U. Agency for Fundamental Rights and rapporteur for drafting General Comment No. 34, discusses the initial articulation of the right to freedom of expression and its restrictions set out in Article 19 of the International Covenant on Civil and Political Rights. Using this as his jumping off point, he explores the subsequent wide interpretation of this right in case law to encompass political, commercial, and journalistic speech. He then discusses the process of drafting the 2011 General Comment (GC No. 34), which further expanded this right by requiring states to prove a direct association between the speech they want to restrict and a threat.

The early portion of this piece provides fascinating insight into the competing values of the stakeholders involved in the drafting of Article 19. In a particularly illuminating portion, O’Flaherty describes the tussle between the United States and the Soviet Union regarding the appropriate restrictions on the right to expression, and how the Soviet Union prevailed in including restrictions on war propaganda. While O’Flaherty provided a strong account of the Article 19 drafting, an opportunity was missed to bring the same sort of color to his description of the development of GC No. 34, particularly given the author’s behind-the-scenes role in its drafting.

In Chapter Three, Yvonne Donders, Professor of International Human Rights and Cultural Diversity and head of the Department of International and European Public Law at the University of Amsterdam, delineates a splinter to the traditional conception of the right to expression. Specifically, she describes the development of a right to *access* information, distinct from the separate right of freedom of expression. Mirroring the overall substantive theme of Part I of the book, Donders discusses how the development of this separate right reflects and facilitates the development of certain economic and social rights. In the context of health, for example, she de-

scribes how the right to access information about personal health data and health services, buttresses the right to health.

In contrast to the previous chapters, which described expansions in the conception of the right to expression, Chapter Four involves the fleshing out of a restriction. Patrick Thornberry, Emeritus Professor of International Law at Keele University and the Rapporteur for drafting General Recommendation No. 35 (GR 35), describes the International Convention on the Elimination of All Forms of Racial Discrimination, which made racist hate speech illegal, and its subsequent interpretation in GR 35. A main theme highlighted throughout the essay is the attempt to balance this prohibition against the right to freedom of expression. In perhaps the most instructive portion of the essay, he cites a portion of GR 35 that responds to the opposition of Western nations against the perceived restriction of expression: a prohibition of hate speech actually *ensures* the freedom of expression of the victims of such speech.

The next four chapters continue to analyze the development of the right of expression. This is done through the lens of the rights of children in the Convention on the Rights of the Child (Chapter Five), access to information for persons with disabilities in the Convention on the Rights of Persons with Disabilities (Chapter Six) and the development of the right of expression in the context of UNESCO (Chapter Seven). These chapters effectively add depth to the material previously discussed in the book and strengthen the reader's understanding of the development of the right.

The second portion of the book shifts gears to focus on challenges to the right to expression and information in the modern context. Although this portion is less cohesive thematically than the first section, the strength and accessibility of the essays compensate for this. Where the first portion of the book is well suited to academics with an interest in U.N. history—the intended audience described in the introduction—the second portion may be of interest to members of wider society who are concerned with matters such as the impact of counterterrorism policies on the international conception of the right to expression.

In Chapter Nine, Helen Darbishire, the founder of the Freedom of Information Advocates Network, reiterates a

theme from earlier in the book—that the right to access information has developed as a distinct human right—and then dives into the challenges facing this right in the modern context. In what is perhaps the most accessible portion of the book, Darbishire asks and answers questions such as: How do we define information? Who can ask for it? Should the public be charged for access to this information? Despite this strength, this chapter is emblematic of the fact that this book is a collection of essays and not one cohesive work, as it rehashes some of the same historical development of the right to access information covered in Chapter Three.

Perhaps the timeliest piece in the compilation comes in Chapter Eleven, where Aidan White, a journalist and Director of the Ethical Journalism Network, discusses the importance of the right to expression in traditional journalism. Specifically, he describes its tension with national laws restricting speech, such as blasphemy laws, and the need for accountability mechanisms to ensure responsible speech. Despite mainly focusing on traditional journalism, he briefly touches on the decreasing formalism of the media, the rise of the citizen reporter and the corresponding concern that complete freedom of expression in this arena could lead to corruption of democracy. In light of recent developments of proliferation of fake news on social media sites and subsequent allegations of this news influencing elections, this point seemed particularly poignant and deserving of further analysis.

Other pieces of interest to the wider public in this portion of the book include the challenges to the freedom of expression in the era of digital communication (Chapter Ten), the rejection of defamation of religion in international law (Chapter Twelve), and how counter-terrorism efforts affect the right to freedom of expression (Chapter Thirteen).

Overall, the book was an enjoyable read and a strong addition to the body of work on the right to freedom of expression. Perhaps the main weakness of the book is the disconnect in accessibility between Parts I and II. This could have been improved by splitting the work into two books or having a dedicated introduction chapter to the second portion. In any case, the decision to structure the first part of the book as an overview of the development of the right to freedom of expression in international law rather than a treaty specific account pays off. Although this necessarily limits the details the book

can address, the ability to get a bird's eye view of the various developments deepens the reader's understanding of the context of the right and provides a uniquely rich source of information for academics, students, and practitioners alike.

Activating Democracy in Brazil. Edited by Scott Mainwaring. Notre Dame, Indiana: University of Notre Dame Press, 2015. Pp. xiv, 297. \$39.00 (paperback).

REVIEWED BY CARL BRZORAD

Boise State political science professor Brian Wampler has spent the better part of two decades in Brazil studying the country's grand experiment with direct democracy. In *Activating Democracy in Brazil*, Wampler's central thesis is that Brazil's 1988 constitution initiated a sea change in the nature of citizen-state interactions, as well as the processes for mobilizing and deploying political power. Whereas clientelism and oligarchy had characterized previous eras, the new constitution ushered in a "participatory citizenship regime." The goal of the reforms was to increase the responsiveness of state bureaucracy to the needs of individuals and local communities. The bureaucracy itself, however, cannot actualize this goal: it is up to citizens and civil society organizations to "activate" the new democratic regime.

By "activate," Wampler means that citizens, activists, and public officials must actively participate in the myriad of public fora established to foster citizen engagement in state decision-making processes. Among other venues, citizens are encouraged to participate in public policy management councils, public policy conferences, participatory budgeting programs, and legislative hearings. Collectively, these fora allow citizens the opportunity to shape budgetary policy, affect the allocation of state and local funds, and voice opinion on public projects in their localities. In its ideal form, the participatory regime affords citizens of all stripes the opportunity to secure resources for their communities, and to ensure that important civil and political rights are protected. In effect, the regime allows citizens to interact directly with the state to improve their quality of life.

Wampler explores the unique Brazilian system at the grass-roots level in Belo Horizonte—a city in southeastern Bra-

zil with a population of over 2.5 million. He attends countless citizen-state meetings, describing interactions with local players in government and private organizations to paint a picture of the daily operation of the participatory regime. Wampler's book is part ethnography, part political science. He fluidly shifts from discussing the scholarly literature on the Brazilian system to documenting the daily realities of life in Brazilian favelas—the nation's sprawling urban slums. Wampler's primary focus is on how civil organizations in the favelas have utilized participatory state resources to better their impoverished communities.

Some favelas have had modest success wielding the participatory regime to their benefit. But there is substantial local variation in the methods used to "activate" the regime, as well as the fruits of efforts to engage it. Wampler argues that the variation results from the interplay of five factors: state formation, the development of civil society, government support for citizens' use of voice and vote, the degree of public resources available for spending on services and public goods, and the rules that regulate forms of participation, representation, and deliberation within participatory venues.

While variation in success and tactics is, perhaps, inevitable in a country as large and diverse as Brazil, one benefit appears universal: participatory fora enable government officials to interact formally and informally with the citizens who are affected by their decisions. The effectiveness of informal interaction and relationship development in securing desired outcomes in state decision-making is enhanced by holdover social structures forged during previous clientistic regimes: knowing someone in government still pays huge dividends. This is true to some extent in every society, but is a particularly apt description of the Brazilian political landscape. The sentiment is captured by an infamous phrase in Brazil: "For my friends, everything; for my enemies, the law." Against this clientilistic backdrop, it has been the goal of the participatory regime to replace the monetary and patronistic corruption that once drove politics with formal and social integration between decision-makers and the communities they serve—particularly those less fortunate communities who were unable to purchase influence in prior systems.

Conceptually, the participatory regime reflects the ancient Greek concept of *mētis*—a fusion of expert knowledge

with the ideas and knowledge of ordinary citizens. The fusion allocates decision-making influence across a broader swath of society, thereby increasing the faith of the citizenry in government, and informing elites and government actors of the perspectives of those with lesser influence. Moreover, the interplay between expertise and the knowledge of the masses is said to yield the wisest, best-informed decisions. A result of the implementation of *métis* through the participatory citizenship regime has been to blur the distinction between the state and society. This ambiguity has yielded analytical difficulties for political scientists studying the Brazilian system, but is in many ways the intended outcome of the regime.

Wampler devotes one of eight chapters to tracing the transformation—at times gradual, at times sudden—of Brazilian political regimes over the past 150 years. The documentation provides historical and analytical context for his examination of the current system. Each successive regime has operated within a larger social context characterized by extreme inequality and rigid social hierarchy—two staples of Brazilian society stretching back centuries. While prior systems sought to exploit those forces to facilitate the domination of land-owning oligarchs (*coronéis*), the 1988 Constitution sought to stem that trend, taking social justice and equality as its central aims. While no constitution or piece of legislation could single-handedly correct these entrenched social and economic disparities, Wampler concludes that the participatory regime ushered in by the 1988 Constitution gave citizens real hope that the government would one day be responsive to their needs.

Fast-forward to the current state of affairs. In 2015 and 2016, mass protest and political upheaval greeted the disclosures of corruption and money laundering at the highest levels of the Brazilian government. The tumult played out on the world stage, and culminated with the ouster of President Dilma Rousseff. Hailed by many as a success story for seamless modernizing and democratization, recent events have thrown Brazil into a period of instability, challenging the strength of the institutions created by the 1988 Constitution. Wampler's book was published just prior to the upheaval, and one wonders how his conclusions would change—if at all—in light of recent events. Perhaps clientilism is too deeply rooted in the socio-political landscape to be adequately addressed by citizen

“activation” of local government structures. On the other hand, perhaps extending direct democracy from the lower echelons of government to the national level could provide added oversight necessary to counter the corrupting influence of money; however, that may prove administratively impossible.

Wampler’s future work could address these issues, and suggest modifications to the current regime in light of the persistence of systemic corruption. Along similar lines, Wampler could address in more depth his conclusions regarding the adequacy of the new system in addressing the traditional ills of corruption, inequality, and exploitation. While Wampler provides a detailed account of *how* the system functions at the grass-roots level, he leaves the reader without a full examination of the broader efficacy of the system as a whole.

Prosecuting Maritime Piracy: Domestic Solutions to International Crimes. Edited by Michael P. Scharf, Michael A. Newton & Milena Sterio. New York, NY: Cambridge University Press, 2015. Pp. xiv, 355. \$45.99 (paperback).

REVIEWED BY GEORGE HARRIS

Over the last ten years, the threat of piracy has had an enormous impact on global commerce. Since 2005, Somali pirates have seized more than 179 vessels, taken more than 1,000 crewmembers and passengers hostage, and extracted more than \$400 million in ransom. In response, governments have increased counter-piracy operations, and shipping companies have had to pay higher insurance rates to cover ransom payments. Due to increased piracy activities, the laws relating to piracy have seen massive development in the last six years, with government attorneys relying on creative and aggressive prosecution tactics while defense counsel raise novel issues that stretch the limits of traditional maritime law.

Prosecuting Maritime Piracy is the result of the work of the Public International Law & Policy Group’s High-Level Piracy Working Group, which was chaired by Michael Scharf, the lead editor of this book. It is written as a resource for practitioners, prosecutors, and government officials, with a particular focus on the judicial aspects of counter-piracy efforts. The work’s fifteen essays span a broad array of topics, but are intended over-

all to be “[an] exploration of the legal issues arising throughout the process of prosecuting pirates, from the pursuit and apprehension of pirates to their trials and transfers to the countries in which they serve their sentences.” The editors focus on the prosecution of individual pirates under domestic piracy laws. The book proceeds in four sections: the legal foundations for the prosecution of pirates; tactical considerations on pursuit, capture, and detainment of pirates; legal issues in domestic pirate trials; and finally, sentencing and imprisonment of pirates.

By situating the book as a contemporary overview of piracy law and prosecution, the editors and contributors cover significant ground. The editors have done an excellent job of assembling the articles, and the structural choice to move from the legal foundations through the prosecution process makes it much easier to follow the dizzying array of actors, laws, and developments in this field. The book discusses a complex anti-piracy response across nearly a dozen nations and thousands of miles of high seas. The early chapters focus on customary international laws on piracy, the lack of a comprehensive approach to piracy legislation across different national jurisdictions, and the history of universal jurisdiction in piracy cases. Chapter Three, Ved Nanda’s “Exercising Universal Jurisdiction over Piracy,” provides a substantial history of jurisdiction in piracy cases, and lays a strong foundation for an expansive power to apprehend and prosecute pirates. Nanda discusses the *hostis humanis generis* (enemy of mankind) doctrine, finding evidence of its application in early U.S. Supreme Court cases on piracy and throughout the body of customary international law. It would be helpful, however, to get a better understanding of why states are reluctant to prosecute pirates, especially with such a potent legal weapon and the general disdain for piracy among the international community.

Following this overview of the law on piracy, the text explores the use of force against pirates, with chapters focused on both government and private actors and the limits of their abilities to intercept pirate vessels, detain suspects, and to respond to force with proportional self-defense. Chapter Six, “The Use of Force by Private Parties against Suspected Pirates,” is especially interesting due to the increased use of private security forces on ships in the last few years. The authors outline the proportional force requirement for private actors,

and even give examples of the steps that private actors may take, from simple deterrence to the use of warning shots and barbed wire on vessels. These descriptions help to flesh out the discussion of private use of force, and lend further credence to *Prosecuting Maritime Piracy's* usefulness as a resource for practitioners.

Next, the authors discuss the pitfalls of transferring pirates between different nations for pre-trial detention, prosecution in the apprehending forum, and finally their release into their country of origin upon acquittal or their detainment in the country of prosecution, or their home country, depending on the nature of the offense and bilateral treaties. This leads to one of the most intriguing sections of the book, with articles that discuss novel legal issues in domestic pirate prosecutions. Chapter Nine, "Evidentiary Issues in Piracy Prosecutions," includes an excellent review of the Regional Anti-Piracy Prosecutions and Intelligence Coordination Centre (RAP-PICC), an international collaboration between several of the common forum states around Somalia and major shipping countries such as the United States, the United Kingdom, the European Union, Kenya, the Seychelles, and Tanzania. This collaboration has led to increased data collection, improved analysis of pirate business models and financing, and law enforcement cooperation to disrupt pirates. Frederick Lorenz and Kelly Paradis, the authors of this article, construct a very clear picture of the challenges of evidence collection in piracy cases, replete with examples of contemporary prosecutions and quotations from law enforcement agents that work in the field. By coherently laying out the challenges of these types of cases, summarizing the applicable laws, and discussing the responses to those challenges, the authors provide a crash course that almost serves as a field guide for replicating the success of this regional effort.

After the book's extensive overview of the state of the law and responses to modern anti-piracy, Scharf uses the conclusion to advocate for the creation of an International Piracy Court, relying on a model proposed by Jack Lang, the Special Adviser to the U.N. Secretary-General on Legal Issues Related to Piracy off the Coast of Somalia. This International Piracy Court would be based on the international tribunal structure utilized in prosecuting the Lockerbie bombers. In that case, the United Kingdom temporarily established a Scottish trial

court applying Scottish law in the Netherlands in order to prosecute two Libyan nationals accused of the 1988 bombing of Pan Am flight 103. The bombing killed 259 passengers and crew in the air over Lockerbie, Scotland. The Lockerbie case was significant due to the unique nature of the proceedings, which required agreements between Libya, the United Kingdom, and the Netherlands to establish the tribunal and prosecute the two defendants beyond their native jurisdiction.

Lang's proposal would create a special Somali court situated in Arusha, Tanzania at the current headquarters of the International Criminal Tribunal for Rwanda. This court would apply Somali and international law to prosecute pirates working off the coast of Somalia. Though Lang's proposal has a number of advantages—including the inclusion of Somali authorities—it would require a significant amount of resources in one of the world's poorest countries. In addition, it would require massive international investment and assistance for the Somali authorities—as Scharf points out, “Somalia’s legal system is widely considered to have no national system and to be a mixture of English common law, Italian law, Islamic sharia law, and Somali customary law.” Though he argues that the U.N. Laws of the Sea and other international doctrines could supplant this, it undercuts the necessity of situating the prosecutions under Somali supervision. Though this could help to improve the strength and effectiveness of Somali courts through greater cooperation with international authorities, the burden may be too high. It seems unlikely that the nations that shoulder much of the cost of anti-piracy operations and prosecutions would be interested in turning over the prosecutions of high-profile pirate kingpins and financiers to a justice system that is not fully equipped to handle them.

The breadth of the material in *Prosecuting Maritime Piracy* works well, bringing in a lively mix of scholars, military advisors, defense counsel, and other experts to provide a full picture of the current state of affairs in the field. Though it covers a vast mix of overlapping laws, governments, and international organizations, in general the book is quite easy to follow, and is an enjoyable read for those who want to get a substantive introduction to the current state of anti-piracy operations and the challenges that practitioners face.

Lawfare: Law as a Weapon of War. By Orde F. Kittrie. New York, NY: Oxford University Press, 2016. Pp. 481. \$ 26.31 (hardback).

REVIEWED BY GEORGE KADIFA

U.S. Major General Charles Dunlap Jr. of the U.S. Air Force Judge Advocate General's Corps defined "lawfare" as the strategy of "using—or misusing—law as a substitute for traditional military means to achieve an operational objective." In *Lawfare*, Orde F. Kittrie chronicles a variety of examples of state and non-state actors using litigation to achieve the kinetic effects of traditional weapons. Kittrie recognizes that law can be used as a weapon for good or for evil. He argues, however, that the United States is not doomed to a binary choice of supporting law to the exclusion of strategic concerns or ignoring law altogether on strategic grounds. Instead, Kittrie contends that the United States should embrace an instrumentality approach to law in its foreign relations, so that it may use—but not break—the law to achieve strategic objectives. Kittrie argues the United States, with its large pool of lawyers and strong legal culture, is uniquely well-positioned to be a major lawfare actor. The United States, however, currently lags behind other states (China and Israel) and non-state actors (the Taliban and Palestinian rights NGOs) in its use of lawfare, to its strategic peril.

Kittrie begins his book by describing two types of lawfare: (1) instrumental lawfare—the instrumental use of legal tools to achieve the same or similar effects as those traditionally sought from conventional kinetic (combat) military action; and (2) "compliance-leverage lawfare,"—employing the law, typically the law of armed conflict, to gain non-material strategic advantages (public relations) over an opponent. Kittrie emphasizes that this book will primarily focus on the first type of lawfare, although the second is mentioned throughout his publication. He then argues that the United States' current approach to lawfare is primarily defensive, seeking to avoid accountability at the International Criminal Court (ICC). The few offensive components, such as the Treasury Department's successful sanctions on Iran, are uncoordinated with other government entities, leaving current U.S. lawfare strategy largely ad hoc and piecemeal.

Kittrie provides a convincing explanation for the increasing influence of lawfare. He argues that the prominence of lawfare is the result of a variety of factors. These include America's dominance in conventional warfare, leading to the rise of asymmetric warfare strategies; the increasing number and reach of international law and tribunals; the rise of NGOs focused on law of armed conflict and related issues; the information technology revolution; and globalization and economic interdependence.

Kittrie should be commended on providing detailed, observant, and nuanced descriptions of the legal strategies surrounding the different case studies he selects. For example, Kittrie provides an interesting account of how civil litigation in the United States successfully held state and non-state actors accountable for attacks committed against American citizens abroad. In another chapter, he discusses lawfare in space. Likewise, Kittrie provides detailed information on the actors and bodies involved in the cases, making it easy for someone to know where to go if they wished to examine a case in more detail. Kittrie's writing style also facilitates the book's clarity. *Lawfare* clearly divides each of his topics into sub-topics, each in turn with their own sub-topics. For example, Kittrie addresses the topic of "Private Civil Litigation Against Terrorists, Their Material Supporters, and Their State Sponsors" and then examines two laws under which cases were filed and a variety of cases under each law. Although, *Lawfare* could not be described as a great literary work, the clear and well-structured nature of the book makes it a handy reference guide long after a reader's first reading and a useful book for a professor or lawyer intending to practice lawfare to have on their shelf.

Kittrie does not attempt to chronicle every use of lawfare, instead choosing to examine specific case studies and from them deriving lessons that may be useful to American policy makers. *Lawfare* addresses lawfare waged by U.S. private-sector and non-governmental organization attorneys, the U.S. government's financial lawfare against Iran, the Chinese government's use of lawfare, and lawfare used by state and non-state actors in the Israel-Palestine conflict. *Lawfare* could be criticized as being disproportionately focused on the Israel-Palestine conflict—four out of ten chapters exclusively address the conflict. Kittrie, however, justifies this focus by arguing that

the Israel-Palestine conflict is the closest the world has to a lawfare laboratory. Much as the Spanish Civil War served as a testing ground for weapons and tactics subsequently used in World War II, the Israel-Palestinian conflict is foreshadowing lawfare strategies and tactics that will soon be replicated in other conflicts.

It is in this key case study, however, where book's main weaknesses appear. Although the lawfare tactics Kittrie describes may be effective in strengthening a nation's national security interest, Kittrie appears frequently callous or oblivious to the human rights ramifications of these actions.

Kittrie devotes four chapters to describing the nuanced legal strategies surrounding the Israeli-Palestinian conflict, but neglects to provide any history of the origins of the conflict or why it is taking place. Kittrie makes no mention of Israel's War of Independence or the *Nakba* in 1948, in which the Israeli army, assisted by paramilitary forces, perpetrated a campaign of genocide and ethnic cleansing against Palestinian villagers culminating most famously in the massacre of Deir Yassin, in which over 100 Palestinian villagers were killed by an Israeli paramilitary of the Irgun. Kittrie likewise neglects to discuss Israeli's conquest and colonization of the West Bank, the Gaza Strip, and the Golan Heights from its surrounding neighbors all widely recognized to be, even by the United States, in flagrant violation of international law.

Kittrie then proceeds, however, to frame the Palestinian Authority's attempt to join the United Nations, United Nations Educational, Scientific and Cultural Organization (UNESCO), and the ICC as "lawfare" rather than view these efforts as an attempt by a state to achieve sovereignty and its rights under international law. In this instance, Kittrie appears to diminish human rights and rights based advocacy by failing to recognize it as such and simply stating that it is lawfare on par with actions by states (Israel and United States) to stop these rights from being recognized.

Kittrie's blindness to the origins of the Israel-Palestinian conflict also pervades his presentation of the facts about the Israel-Palestine conflict. While many of Kittrie's comments on the conflict are insightful—for example, recognizing that the U.N. Council on Human Rights has in effect ceased to fulfil its initial purpose and has become almost exclusively focused on

criticizing Israel, making it an instrument of lawfare more than human rights—much of his analysis appear one-sided. Though Kittrie engages in a highly critical account of human rights abuses perpetrated by Hamas and other Palestinian organizations, he exhibits a notable blindness for those committed by Israel. For example, Kittrie appears to present an extremely one-sided account of the 2008 Gaza War, failing to recognize the widely documented human rights abuses perpetrated by Israel in the conflict or the fact that the Gaza strip at the time was in a state of humanitarian crisis brought on by complete blockade of the strip by the Israeli government. This is especially disconcerting as Kittrie speaks complementarily of the Israeli lawfare tactics to stop ships, that were being used by human rights activists to disrupt the blockade and bring in humanitarian supplies to the strip from leaving Greek ports. In effect, Kittrie appears to be recognizing measures to disrupt non-violent human rights activism as “good” lawfare tactics.

Kittrie refers to the Goldstone report, a U.N. report published in 2009 stating that Israel engaged in widespread violations of humanitarian law during the conflict. He argues that the Goldstone report’s strongest charges, including that Israeli forces intentionally targeted civilians as a matter of policy, were rescinded by Goldstone himself. He neglects to mention, however, that the other three authors of the report—Hina Jilani, Christine Chinkin, and Desmond Travers—stated unequivocally that no retraction of the report is justified or the widespread belief that Goldstone’s backpedaling was a product of the campaign of public humiliation he experienced, including being barred from attending his grandson’s Bar Mitzvah in Johannesburg, after the publication of the report.

Additionally, in regards to the Goldstone report, Kittrie argues that the primary point at issue was different interpretations of the international law principles of proportionality and distinction by Israel and the Goldstone report. This seems like a very odd statement given that the Goldstone report documents eleven instances in which the Israeli military intentionally targeted Palestinian civilians, including an instance where civilians were trying to leave their homes to walk to a safer place while waving white flags. The report also documents instances of the Israeli military torturing detainees, using civilians as human shields, and extensively using white phosphorus gas in heavily built up civilian areas. *Breaking the Silence*, an

Israeli NGO established by Israeli war veterans, likewise has stated that Israeli forces intentionally killed Palestinian civilians. It is therefore odd to see what interpretation of the principles of proportionality and distinction in international law could be used to legalize this conduct.

Kittrie's blindness to Israel's human rights abuses is concerning as he suggests that Israel's use of lawfare is a model that the United States should follow. At one point, he suggests that the United States should emulate Israel's tactics of using litigation to shut down pro-Palestine NGOs who apply different interpretations of the international law principles of proportionality and distinction. It appears that he is advocating, in effect, that the United States—like Israel—should attempt to stifle criticism of NGOs who call out their human rights abuses. Kittrie goes further still, arguing that Israel should work on “persuading key Western governments and other world powers . . . that they should use their international influence to bolster shared constructions of the law or armed conflict.” (308). It appears that Kittrie is advocating for nations to argue for adjustments to the laws of armed conflict, rather than cleaning up their human rights records.

Kittrie embraces a similar thought process in regards to other policy recommendations he makes. At one point, he argues that the United States withdrawing its signature from the Rome Statute was justified because the ICC began a preliminary examination against the United States for torturing detainees in Afghanistan. “In the face of this explosion of lawfare, and with the ICC announcing in 2014 that it is conducting a preliminary examination of the possibility that war crimes were committed in Afghanistan by the U.S. military . . . the G.W. Bush and Obama administrations' decisions to stay out of the ICC are looking justified.” (31). This is concerning, as he is in effect arguing that the United States should manipulate the law in whatever way supports their self-interest, even if its effect is to prevent accountability for its human rights abuses.

Kittrie can be commended for providing the reader with a solid conceptual understanding of the phenomenon of lawfare and providing an interesting and detailed analysis of certain case studies of lawfare. Kittrie's book provides some good and interesting ideas and recommendations for U.S. policymakers of clever and impactful litigation strategies to further Ameri-

can strategy. For example, using lawfare to sue state sponsors of terrorism in American courts. However, the fatal error of the book is Kittrie's willingness to advocate for lawfare as a method to insulate the United States and its allies from accountability for human rights violations. While such conduct may be in the narrow Machiavellian strategic interest of the United States, this is not conduct the world's prevailing superpower should be engaged in.

Legal Normativity in the Resolution of Internal Armed Conflict. By Philipp Kastner. New York, NY: Cambridge University Press, 2015. Pp. xi, 217. \$103 (hardcover).

REVIEWED BY NOAH LIPKOWITZ

Laws are not silent when parties to an internal armed conflict sit at the negotiating table, but neither are they omnipotent mandates. In his book, *Legal Normativity in the Resolution of Internal Armed Conflict*, Philipp Kastner identifies internal armed conflict as the locus of contemporary peace negotiations and argues that the prevailing legal literature overlooks the actual impact of legal norms on negotiations through its preoccupation with the substance of peace agreements. Meanwhile, peace and conflict literature largely dismisses international law as *prescriptive* and coercive rather *proscriptive*, and therefore regards international law as constraining. Kastner situates his book, based on his Doctor of Civil Law thesis, between these two extremes and demonstrates the influence of international law on the process of negotiation through the behavior and interaction of the negotiating parties, third party mediators, and civil society. This process-based approach explores a compelling hypothesis that laws influence the field of negotiation for those around the negotiating table, and that those actors, in turn, influence international legal norms as well.

Kastner begins by analyzing the discourse of peace negotiations to reveal the treatment of international law by the parties involved. He looks to explicit references to international law in peace agreements to gauge whether and how it has actually permeated such agreements. Drawing on common themes of human rights, transitional justice, refugees and internally displaced persons, and women's rights, Kastner finds that the

background presence of international law ensures that these issues are on the negotiating agenda. Once these issues are on the negotiating table, however, the law is handled in a variety of ways. As Kastner notes, despite increasing recognition by negotiators and mediators that international law has a role to play in how crimes committed during armed conflict are addressed in peace negotiations, “a generalized mode of relying on international law does . . . not exist. What may appear as a static body of law . . . is in practice referred to and utilized very differently and even treated quite creatively.”

Having examined the discourse of negotiators, mediators, and external actors, Kastner finds that the parties involved often perceive international law as a restrictive force, despite its increasing influence on peace negotiations. This (mis)perception is grounded in real experience. As Kastner notes, negotiating parties often engage in “lawfare,” invoking international law when it is particularly disadvantageous to the other side. This offensive use of international law tends to complicate rather than encourage peace agreements.

Nonetheless, Kastner argues that international law can, and on occasion has, played a facilitative role in negotiations by delineating the bounds within which possible solutions can be found. To use one of his most salient examples, the United Nations weighed in during Columbia’s 2012 negotiations with FARC, declaring that FARC rebels could not, under law, receive amnesty for grave violations of human rights and humanitarian law. At the same time, it stressed that international law remained flexible with respect to other kinds of criminal prosecutions. The Columbian president, citing the Rome Statute, subsequently echoed the position that blanket amnesty was legally out of bounds, but the contours of transitional justice mechanisms were up for negotiation. The combined normative force of the United Nations, the Rome Statute, and Columbia’s invocation allegedly added the possibility of a truth commission and the human rights of victims to the agenda, in addition to the possible integration of FARC members into civilian life. While the concept of “red lines” in negotiating is not new, Kastner’s insight is that international law can facilitate negotiation by stabilizing and legitimizing certain expectations and by delineating the bounds of what is up for negotiation. Kastner makes a compelling argument that international law can and should facilitate negotiation. It remains unclear,

however, how this role can become prevalent in peace negotiations when, as Kastner himself observes, many negotiating parties regard international law with “suspicion” and treat it instrumentally, waging “lawfare” against the other side.

Kastner argues that mediators are purposeful actors that shape the process of negotiations. First, they draw on international legal norms to ascertain their own legitimacy in the negotiation process. Second, their “normative ambition,” whether latent or openly proclaimed, impacts the product as well as the process of negotiation. Whether mediators pursue an interventionist mediation strategy or a self-proclaimed neutral, facilitative one, they inevitably exert a normative influence on negotiations that reflects their own commitments and ideals.

To that end, Kastner’s most impactful claim is that mediators create international legal norms at the same time they impose them. He argues that mediators form an epistemic community that exerts guiding influence on all mediation through the interaction and shared knowledge of its members. Thus, Kastner identifies that norms have begun to emerge regarding the appropriate balance between facilitative and interventionist mediation in a variety of situations, how to navigate asymmetric negotiations, and delineating the acceptable bounds of behavior for actors in their role as mediators.

Whereas the epistemic community of mediators is governed by a relatively coherent set of norms, the rules for civil society are “thinner and more embryonic,” according to Kastner. He views civil society as key to creating enduring and more democratically legitimate peace agreements. Peace negotiations, which take place behind closed doors and between unelected parties, necessarily sit on democratically shaky ground. For Kastner, allowing civil society to participate imbues the process of peace negotiations with democratic input. Thus, the participation of civil society actors in negotiations bestows legitimacy on them by serving as a conduit for the public interest where formal democratic mechanisms are impractical, given the state of ongoing armed conflict. Civil society actors contribute to better quality and therefore more enduring negotiated agreements as well. They put issues on the agenda and facilitate their approval through public advocacy and communication with the negotiating parties and mediators.

The international community is starting to agree with Kastner on the importance of involving civil society in peace negotiations. Kastner identifies broad-based initiatives by the United Nations, such as Security Council Resolution 1325, as well as specific efforts in contexts like Darfur, where the inclusion of civil society was considered integral to successful negotiation by the African Union High-Level Implementation Panel, the 2008 Heidelberg Darfur Dialogue, and the Doha Declaration, written by representatives of Darfurian civil society. Nonetheless, Kastner is careful to note that this is a nascent shift. While exhibiting a general trend toward inclusion of civil society, the international legal community has been silent on the specific mode of its involvement or on how to select actors to participate in negotiations. More complex issues arise where some members of civil society are not representative, such as ethnocentric groups, or have ulterior motives and seek to sabotage negotiations. To be sure, these are challenging areas, but the fact that they have yet to be worked out does not undercut Kastner's larger point. Time will tell if the emerging norms encouraging the involvement of civil society actors in peace negotiations continue to develop.

Lastly, Kastner argues that the bounds of peace negotiations are set, not by formal law that is backed by enforcement, but rather by legal obligations internalized by negotiators and mediators. Thus, it is the attitudes of the negotiating parties rather than the threat of sanction that sets the bargaining range for an acceptable agreement. Kastner's view is an explicit rejection of a realist view in which negotiation is governed by the balance of power and what is enforceable against the parties. To illustrate his point, he cites the norm against granting blanket amnesty for the gravest international criminal crimes and an unevenly-invoked yet growing obligation to combat impunity for violations of international human rights and humanitarian law. This obligation is made concrete through Kastner's example of the International Criminal Court (ICC). While negotiating parties may hold diverging visions of peace and justice, the fact that they bargain in the "shadow" of the ICC encourages negotiating parties to grapple with transitional justice issues like amnesty. Most importantly for Kastner, the shadow of the ICC facilitates rather than restricts negotiation by placing certain matters on the agenda and delineating certain bounds of acceptable behavior, but

otherwise leaving room for creative solutions by the negotiating parties.

This work's greatest asset is its novel angle, and its greatest vice is its inaccessibility. While Kastner intends his book to "be of use to scholars, students, and affiliates of international organizations and non-governmental organizations," its highly academic syntax excludes readers who are not armed with a background in legal and sociological theory. Language skills are also presumed, since Kastner supports his points with quotations in French on multiple occasions, which he does not translate for the reader. Kastner makes clear that his book is initiatory. It tests his hypothesis that the role of international law is best understood through the process of peace negotiations rather than their product, and that international legal norms can facilitate rather than restrict such negotiations. The new ground he has broken certainly deserves a deeper look.

Global Intelligence Oversight: Governing Security in the Twenty-First Century. Edited by Samuel Rascoff and Zachary Goldman. New York, Oxford University Press, 2016. Pp 384, xxxi, \$55 (hardcover).

REVIEWED BY SIDRA MAHFOOZ

In the first decade of the twenty-first century, the rise of global security threats heralded significant advances in intelligence surveillance. States have established an expansive and interdependent system of intelligence programs sophisticated enough to track anyone anywhere in the world. Though intelligence apparatuses serve a vital purpose, their increased size, capacity, and the vast number of resources at their disposal carry a significant risk of abuse. Serious intelligence failures leading up to the attacks of September 11, 2001, and several failed military ventures across the Middle East, Western Europe, and Africa, led to questions on the effectiveness of the intelligence community's practices. Additionally, controversial security practices, such as renditions and detentions of terrorism suspects, warrantless searches, and widespread eavesdropping have sparked greater demand for transparency in intelligence activities. Recognizing this demand, the authors of *Global Intelligence Oversight* focus on appropriate due checks and governance.

Samuel Rascoff and Zachary Goldman join together to use their notable experience within the international security sector to comment upon the appropriate framework for governing the global intelligence community. *Global Intelligence Oversight* is a comparative investigation of how democratic countries can govern their intelligence services so that they are both effective and operate within frameworks that are acceptable to their people in an interconnected world. Rascoff and Goldman serve as the faculty directors of the Center on Law and Security and professors at NYU School of Law. Rascoff previously served as the director of intelligence at the New York Police Department, law clerk to U.S. Supreme Court Justice David H. Souter, and associate at Wachtell, Lipton, Rosen & Katz. Goldman served as a Special Assistant to the Chairman of the Joint Chiefs of Staff at the U.S. Department of Defense, as a policy advisor in the U.S. Department of the Treasury's Office of Terrorism and Financial Intelligence, and as a litigator at Sullivan & Cromwell LLP.

Rascoff and Goldman identify new dynamics shaping the oversight of intelligence agencies, describe the main elements of the intelligence oversight system in select Western democracies, and offer new ways to think about both the purposes of oversight and the institutions involved in it. They focus on four areas: the emergence of intelligence and governance; different national and international oversight mechanisms; case studies of four different countries; and trends that will affect global governance in the future.

Instead of asking whether the current architecture of intelligence oversight is "sufficient" for the job, they recommend that intelligence specialists should ask whether the purposes for which institutions were designed remain consistent with the roles the public expects those government agencies to play. For example, the United States requires institutions to focus broadly on questions of governance and legal compliance. In order to limit public interference against the effectiveness and secrecy of intelligence communities, its oversight institutions should act as proxies for the public. Pragmatically, the intelligence community cannot share certain key strategies and policies with the public at large for fear of compromising confidential information. Instead, administratively representative systems can ensure proper intelligence oversight by representing the interests of the public and working with indepen-

dent oversight communities to ensure compliance with law and best practices. While administrative oversight is certainly a key aspect of governance, Rascoff and Goldman should note that it is not effective without a basic level of transparency that allows the public to assess whether the institutions are truly serving as a robust oversight mechanism.

In particular, Rascoff and Goldman propose the system of peer institutions as an effective governance tool. In their understanding, peer intelligence institutions serve as a check on surveillance institutions in other countries, imposing limitations on practices that exceed home country intelligence requirements. This style of “checks and balances” among peer countries results from an interdependent need for the countries to cooperate and mitigate common threats. Rascoff and Goldman outline the ways in which one state’s intelligence services affect how a peer service conducts interrogation, detention, and surveillance; the amount and type of intelligence the other service receives; and the way in which the other service views its own legal obligations. Still, the authors fail to properly consider that states have a common interest to increase their intelligence capacity as much as possible. In fact, this common objective opposes increased oversight in favor of greater self-authority. Furthermore, this style of oversight is likely to concentrate power and intelligence capability amongst the most powerful states, while other states with limited resources and influence lack the ability to stand against the powerful.

While encouraging governance between peer institutions, Rascoff and Goldman take a much more critical approach to the role of courts. The authors argue that courts are ineffective at regulating key intelligence strategies, given their limited scope of expertise and the critical, time-sensitive security issues they must address. Instead, Rascoff and Goldman endorse an administrative solution. The authors use the Foreign Intelligence Surveillance Court (FISC) as an example, demonstrating how it is inadequate because it does not have the capacity to directly rule on intelligence issues. Rather, the court increasingly relies on administrative rules to give content to Fourth Amendment reasonableness standards in the context of rights protection. In using this administrative method, the court establishes several safeguards to maintain rights protection, due process, and appropriate surveillance oversight. Rascoff and Goldman further propose empowering institutions,

such as the Privacy and Civil Liberties Oversight Board (PCLOB), to make administrative rule making by the intelligence community more transparent and participatory, while also creating an institutional space for more robust review of surveillance programs.

Another oversight mechanism Rascoff and Goldman detail is governance through international bodies, in particular the European Court of Human Rights (ECtHR). The ECtHR evaluates member states' national policies and laws for consistency with the European Convention on Human Rights (ECHR). While commending the courts value in promoting more rigorous national intelligence oversight among European states, Rascoff and Goldman nonetheless insist that the crux of the oversight should take place at the national level.

Along with peer constraints and administrative appraisal, there are several civil society methods that complement and enhance checks and balances. Examples include review and assessments conducted by civic society organizations and non-governmental agencies, policies of "outing" and "shaming," and most generally, public approval—or lack thereof—of intelligence activities. Additionally, leaks, litigation, and a growing volume of domestic laws and regulations direct the "peer constraint" institutions, particularly in Western democratic countries, to focus more on rights protection rather than invasive intelligence practices.

Lastly, the authors describe the significant role of the executive in intelligence governance. The president's strategic role as commander in chief in many countries places him or her in a unique position to make important decisions regarding intelligence governance. The array of confidential information at their disposal, and understanding of intelligence threats, economic policies, and political subjects allow the executive to make comprehensive decisions while considering the many competing factors at stake. Similar to their arguments on peer state governance, however, Rascoff and Goldman should consider the inherent tendency of the executive to overreach in intelligence capabilities. While the executive is one of the most holistic oversight apparatuses, it is extremely important for other mechanisms to keep the executive accountable.

The authors also conduct case studies on Israel, Canada, Germany, and the United Kingdom and their global intelligence governance procedures. They comment on Israel's heavy use of its supreme court in addressing intelligence collection and criticize the court for being reactive and case-oriented. The chapter provides examples of how the court offers rulings on particular cases that would not realistically be transferrable to different circumstances.

In the same vein, Rascoff and Goldman argue that Canada's national security activities have significantly outpaced the nation's oversight infrastructure, widening accountability gaps and heightening the risk of rights abuses. They suggest that this is a result of Canada's limited legislative review of intelligence activities. While Canadian courts and public inquiries have assisted in questioning certain tactics, the authors make clear that the executive, legislature, and judiciary are necessary for intelligence oversight, with the executive being the strongest means of regulation. Consistent with their previous arguments, Rascoff and Goldman suggest that a more institutional administrative system of oversight would be an effective means for Canada to fill its current void.

The authors also reflect on the inadequacies of the German oversight system. The Germans utilize a G10 commission oversight mechanism. The authors find this system lacking, given its distinctive non-judicial and non-parliamentary role. They demonstrate how the commission seems to serve more as a rubber stamp under a veil of secrecy than an operative governance oversight regime.

In contrast, the U.K. governance intelligence system is more established. The authors review the traditional legal voices on surveillance governance, drawing attention to the range of oversight bodies in existence. However, these bodies tend to stress legal compliance over broader notions of accountability. The system is bureaucratic in that they seek overall compliance by testing the policies and procedures, instead of sufficiently assessing proposed intelligence policies in advance. As a result, civil society oversight techniques have had to fulfill this gap. While the involvement of civil society is extremely important, the authors recommend that the oversight structure would be more effective with stronger governmental bodies.

Finally, the authors discuss the global developments that may have lasting implications on the strategies of the intelligence community. Changes to the geopolitical landscape, individual empowerment, logarithmic changes in technology, shifting demographics, and environmental stress will serve to mold and expand intelligence activities. In response to these trends, Rascoff and Goldman suggest a greater reliance on open source information and recommend further reforms to the oversight system that focus on how to manage the tremendous scale of big data information and data retention.

Global Intelligence Oversight is an excellent resource for policy makers, academics, and practitioners of the intelligence community, both in the United States and abroad. Rascoff and Goldman conduct a thorough investigation of current intelligence oversight structures, and provide recommendations for more effective governance mechanisms. It is clear that the authors believe a great deal more needs to be done to establish a better framework. Generally, they favor a more institutional approach to oversight whereby administrative agencies play a greater role in keeping the intelligence community responsible for overreach in power. The authors, however, can do more to assess the shortcomings of an administrative, executive, and peer centered review process. As stated earlier, these oversight bodies are not sufficient in themselves. Without proper transparency and accountability processes that ensure these bodies are conducting robust oversight, the system fails. In fact, the executive, the administrative agencies run by the executive, and peer states all favor increased intelligence capabilities for enhanced power. As such, public review and judicial review are essential. The criticisms on courts are at times unwarranted. The judiciary remains an integral external body of oversight that can assess rights abuses and legality of procedures.

In implementing basic institutional checks and balances, the intelligence community should work together with institutional, government, public, and private oversight mechanisms to address the new challenges of the twenty-first century. While surveillance is crucial to successful law enforcement in modern societies, governance structures must be established to hold intelligence communities accountable to their authorized functions, maintain the integrity of the system, and curb misuse of surveillance programs. More effective governance will lead to

better practices that will ultimately help to increase global security.

Quality Peace: Peacebuilding, Victory, & World Order. By Peter Wallensteen. New York, NY: Oxford University Press, 2015. Pp. 1, 210. \$34.95 (paperback).

REVIEWED BY LAUREN E. MARTIN

World peace is a goal that everyone shares and seemingly no one knows how to attain, or sustain. So how can we go about achieving this unattainable, and perhaps *unsustainable* goal? In *Quality Peace: Peacebuilding, Victory, & World Order*, Peter Wallensteen provides a comprehensive analysis of quality peace, which he defines as “the creation of postwar conditions that make the inhabitants of a society . . . secure in life and dignity now and for the foreseeable future.” Included in his analysis are various types of conflicts and post-conflict situations, from inter-state and intra-state conflicts, to the key distinctions between victory and peacebuilding.

Wallensteen is a leading international peace researcher, and is, among other positions at various universities, a member of the faculty at the Kroc Institute for International Peace Studies. He has researched and published widely in the field of peacebuilding. His target audience for this book is those who will actually have a hand in peace agreements, since the book is less of an argument and more of a synthesis of successful and unsuccessful strategies of conflict resolution.

The book begins with a review of the existing literature and scholarship relating to quality peace. This allows Wallensteen to establish the framework within which his argument rests, and provides important background on the history of peacebuilding. He focuses on peace in the twentieth century, specifically after World War II and the Cold War. The period following both of these conflicts, Wallensteen argues, was the first time there was a concentrated effort on the global community to prioritize peacebuilding in a sustainable, lasting way. This holistic approach describes relationships between conflicts often viewed as independent, arguing for example that the end of the Cold War was the true end of World War II.

Ending conflict is one thing, but as Wallensteen argues, maintaining the absence of conflict is another entirely. The

way a conflict is resolved has a significant impact on the likelihood of the peace surviving a certain number of years. For instance, he discusses the significant distinction between ending conflict through military victory and through peacebuilding. Victory, one side of the conflict triumphing over the other side, can actually be worse for maintaining peace because the victorious side might antagonize the losing side in ways that provoke additional conflicts, as seen in Germany following World War I. By contrast, a conflict that ends with both sides agreeing to lay down their arms in favor of a peaceful resolution can be better for sustainable peace because peace becomes the priority in the settlement discussions. With peace as the end goal, the warring camps may be more willing to make concessions and compromises in favor of a greater peace than they would if they were approaching the negotiations on uneven footing with one as victor and the other as loser.

Wallensteen discusses the difference between intra-state conflicts, such as the American Civil War; conflicts between existing states, such as France and Germany in World War II; and conflicts that result in the separation of a new state, such as Eritrea's independence from Ethiopia. Alongside an in-depth analysis of specific examples, he also discusses each type of conflict in aggregate, and counts both the number of conflicts, and how long the peace was maintained before another conflict broke out. Both types of analysis are useful. The specific examples provide a case study for a larger point about the success or failure of a given type of conflict-resolution, and the aggregate cases provide a big-picture idea of how often particular types of conflict-resolution strategies succeed or fail. Wallensteen is aware of the fact that there is only one existing world order—and therefore nothing to compare this world order to—so having both types of analysis is crucial for peace agreements looking forward. It is impossible to predict the future, and no two conflicts will be identical, but the merit of a book such as this one is that any future conflict will bear resemblances to the conflicts discussed in the book, and conclusions and strategies may be extrapolated from the historical examples.

The book takes for granted the desirability of peace. This is perhaps an obvious point to state, but the premise of the book rests on the assumption that the global community collectively desires peace, which is at once obvious and relatively

new. Following from that premise, the book clearly and deliberately lays out the history of the peacebuilding process, the various ways peace can fail, and the things necessary for its success. Conflict resolution is not a one-time agreement that is completed and shelved. It requires upkeep and attention to be successful. One of Wallensteen's main points is that peace is fragile. Achieving a peaceful outcome is difficult because it requires maintenance, or else the situation can slip back into conflict. There have been many instances of failed peace, even in the post-Cold War era when leaders have paid greater attention to peacebuilding processes.

As peacebuilding becomes more than just an unattainable dream for the current world order, but rather a workable reality, an understanding of why attempted peace ends up failing becomes more and more important. It is only through understanding why peacebuilding is unsuccessful, and the significant differences between types of conflicts and conflict resolutions, that we can begin working towards successful, sustainable peace. Books such as *Quality Peace*, which lay out every dimension of conflict resolution and peacebuilding, are important as a jumping off point. Wallensteen has written a short book about a wide topic, which inevitably means that it is more of a summary than a substantive, in-depth analysis. But such a synthesis is crucially useful for the beginning stages of a peacebuilding analysis, especially because each situation, as it evolves, will be different from previous situations. The ability to view every situation in one place, to then understand where to look for future research, is one of the most helpful things for a peacebuilding analysis. But it is important not to take Wallensteen's work in a vacuum, since this 210-page book necessarily leaves out the details necessary for future peacebuilding solutions. But as a work that simply tries to provide a lay of the peacebuilding land, so to speak, it is highly effective and important.

Wallensteen opens the book with an introductory chapter, providing an overview of his argument and what he means by quality peace. He follows with an outline of the main arguments on quality peace in contemporary scholarship, illustrating arguments in a both pre- and post-Cold War international stage. Several chapters of specific examples follow, illustrating quality peace following civil wars, state formation conflicts, and interstate conflicts. The next two chapters discuss quality

peace on the world stage and in international organizations. The final chapter, entitled "Paths to Quality Peace," discusses his overall conclusions about how to further quality peace in a sustainable, long-term way. He discusses the modern prioritization of the United Nations, of focusing on the early phases of conflict and alleviating humanitarian suffering, rather than focusing on what happens after the end of the conflict. He also discusses the success story of France and Germany, and how being in a close-knit interdependent economic community helps prevent future conflicts. Such a success story, although rare, provides a crucial template for parties in current conflicts to follow.

The biggest attraction of this book is its practicality. Peace is such a fragile, tenuous thing, and often doesn't last more than a few decades, if that. The steps outlined in Wallensteen's books are optimistic, and may not apply to every conflict. But he does a superb job of outlining many potential types of conflict, and how the peace process differs for each. For example, Wallensteen points to modern innovations, such as how one might use membership in international organizations as an incentive to maintain peace. Or how quality peace, as compared to simple *peace* requires more than the end of war; rather, it requires providing for the dignity and security of everyone involved following the conflict. Quality peace has a direct, positive impact on the quality of the world order, having an effect on every individual.

For those who want to go into the work of peacebuilding, the task can seem overwhelming. Each conflict seems entirely unique, and peace seems so hard, while conflict seems so easy. This book is not sufficient to assure lasting peace by any means, but it is a useful first place to look when trying to seek information and inspiration for peace processes. For almost any current conflict, one will be able to find corollary examples in this book. Knowing what worked and did not work in previous conflicts can be hugely insightful when trying to put together a peace process. To have a broad analysis of many conflicts in one place is useful for a synthesis and provides a jumping-off point for where to look next for more in-depth analysis.

Climate Justice and Disaster Law by Rosemary Lyster. Cambridge, United Kingdom: Cambridge University Press, 2015. Pp. 436, \$125 (hardcover).

REVIEWED BY ROPAFAZO MAWENI

Climate change presents some of the most pressing and divisive modern global challenges: Who bears the burden of its impacts? Can the weight of that burden be distributed? And, if so, should it be? Can there be anything done to prevent and mitigate this burden? In *Climate Justice and Disaster Law*, Rosemary Lyster postulates a method for addressing these challenges. Lyster presents her method by engaging in a thorough exploration of the relationship between climate justice and disaster law. Climate justice theorizes that human rights and development must incorporate an approach to climate change that both protects the rights of the most vulnerable people and distributes the burdens and impact of climate change equitably and fairly. Disaster law pertains to the promotion of legal preparedness for disasters through a collection of instruments that address aspects of humanitarian relief prior to and following a disaster. Lyster's primary objective is to combine the most vital aspects of both climate justice and disaster law and establish a framework for protecting what she refers to as "human and non-human capabilities." Human and non-human capabilities denotes the ability of individuals and non-human systems, such as plants and wildlife, to fully use their inherent capacity to achieve their own wellbeing.

Before Lyster delves into the details of this framework, she provides an in-depth account of the current state of climate science and climate negotiations. As a result, the book serves not only as an explanation of Lyster's theoretical framework, but also as a comprehensive summarization of the trajectory of global discussions on climate change.

Lyster spends the first two chapters illustrating the political background against which issues of climate justice and disaster are deliberated. The first chapter outlines the plight of modern climate scientists and lays out the unique complexities that set them apart from other scientific disciplines. Lyster states, "Accepting that change is human-induced requires global leaders to take action to reduce emissions, to commit to adaptation, and for developed countries to fund developing

countries in their efforts.” As a result, climate science interfaces with law and policy-making processes that sometimes seek to protect those interests at the expense and vilification of the individuals and institutions dedicated to collecting information and data on climate change. Throughout the chapter, Lyster skillfully identifies and dissects the different factors and forces that result in opposition to climate scientists. In so doing, she contributes to a depiction of an environment in which climate scientists must work in the face of contrary specialized interests, skepticism, and attempts to destabilize their authority.

In the second chapter, Lyster traces the developments in multilateral climate change negotiations from the establishment of the 1992 U.N. Framework Convention on Climate Change (UNFCCC) to the Twentieth Conference on the Parties of Lima (COP 20) in December 2014. Despite the lengthy amount of time devoted to climate negotiations, Lyster notes that concrete progress has not been made, primarily because of tensions between developing and developed countries. The obstacles to climate justice worked together to stall multilateral climate change negotiations and politicize legal and policy processes, culminating in a manner that makes Lyster’s assertion that “a serious question of this time is whether it is possible to rescue climate science from politics” seem perfectly warranted.

Throughout the first two chapters, the author includes discussion of the latest findings in climate science, collected primarily from The Intergovernmental Panel on Climate Change’s (IPCC) Fifth Assessment Report (AR5). The IPCC is a scientific body established by the U.N. Environment Programme (UNEP) and the World Meteorological Organization (WMO) to “provide a clear scientific view of the current state of knowledge about climate change and its potential environmental and socio-economic impacts.” The scientific evidence adds credence to Lyster’s assertions of the imminent need to formulate effective approaches to mitigating the impacts of climate change. Despite Lyster’s claim to the contrary, however, the discussion takes on a heavily technical tone that may not be particularly accessible for a reader who lacks a background in environmental science.

Having provided ample background on the state of climate change, Lyster uses Chapter Three to articulate her the-

ory of climate justice. Here, she borrows heavily from the work of development philosophers, Amartya Sen and Mary Nussbaum, who both argued that human development is best achieved through a capabilities approach. This theoretical framework is underscored by two central tenants: 1) that the freedom to achieve wellbeing is ethically fundamental and 2) the freedom to achieve well-being is understood in terms of individual's capabilities. The essential question of both Sen and Nussbaum boils down to: "What is this person able to do and to be?" It is this question that links climate justice with disaster law, as climate disasters often relegate victims to positions of socio-economic injustice by reducing their ability to freely function and contribute to their society.

Lyster suggests a range of methods to bring justice to both human and non-human communities and systems. The first method she suggests is ethical: collective responsibility. Collective responsibility entails holding individuals and nations responsible for acts and omissions that aggravate climate change and deter the capabilities of those most impacted by climate change. Lyster then moves on to the more operational methods of risk-transfer and compensation for victims of climate risk and disaster. Risk transfer entails shifting the burden and loss or risk financing to another party—here, the parties ethically culpable for climate change. Compensation for victims would involve the creation of funds for those negatively affected. Together, these methods comprise what Lyster calls "a capabilities-inspired climate justice approach to disaster law." Lyster spends chapters four through seven applying her capabilities approach to all stages of disaster prevention: response, recovery and rebuilding. The most concrete part of this capabilities approach comes in the form of practical methods of risk shifting and compensation for victims. While collective responsibility has an ethically logical foundation, the concept of holding individuals and nations accountable for climate change proves difficult, as the primary threat to climate comes from greenhouse gasses, which are virtually untraceable. Though risk transfer and compensation are themselves concrete, they are difficult to achieve without accountability. Thus, the uptake of risk shifting and compensation must be voluntary rather than assigned, which probably results in the inconclusiveness of the climate negotiations that Lyster describes in the latter part of the book.

The mission Lyster has embarked on with this book is ambitious; the formulation of a climate justice and disaster law framework requires a comprehensive account that includes the many distinct yet interweaving elements and issues presented by climate change. Climate disasters demand an integration of multilateral negotiations on climate change, disaster risk reduction, sustainable development, human rights and human security. While Lyster does not always manage to weave together the different strands of the climate justice narrative—the political, legal, philosophical, and scientific—in a seamless manner, she makes a compelling case for the use of a climate justice capabilities approach to disaster law and persuasively argues that responding to climate disasters is not only a matter of law, but is also intimately related to fundamental questions of justice.

Forgery and Impersonation in Imperial China: Popular Deceptions and the High Qing State. By Mark McNicholas. Seattle, Washington: University of Washington Press, 2016. Pp. xiv, 265. \$50.00 (hardcover).

REVIEWED BY HILLEL D. NEUMARK

Through its original and comprehensive examination of crimes involving forgery and impersonation in Qing China (1644-1912), *Forgery and Impersonation in Imperial China: Popular Deceptions and the High Qing State*, takes a noteworthy step in revising and advancing historians' common understanding of law and society in this period.

Although forgery and impersonation were treated as significant offenses and addressed extensively in dynastic legal codes dating from early imperial China through the Qing era, since the opening of China's archives in the 1980s, historical scholarship has largely overlooked the richly documented accounts of these offenses. In *Forgery and Impersonation in Imperial China*, Mark McNicholas presents a particularly revealing examination and analysis of official case records to develop and illustrate the proposition that forgery and impersonation in Imperial China were a fundamental component of Chinese social and political history. In particular, McNicholas's examination explores how these crimes threatened the imperial state's social, economic, and ideological order in an age celebrated

for political stability and administrative efficiency. Through chronicling crime narratives detailing encounters between marginal individuals and the state in Qing China, McNicholas distinctly edifies our collective understanding of the period's social and political histories.

To vividly present and analyze the sociological and political factors that influenced the perpetration of, and official responses to, forgery and impersonation crimes, the book's seven chapters draw upon archival records of official case reports. Moreover, McNicholas includes accounts of forgery and impersonation that demonstrate the remarkable range of severity these crimes spanned. Indeed, while the book surveys the perpetration of diverse offenses within the category of the unauthorized misappropriation of official authority (such as commoners masquerading as various agents of the state), it also highlights episodes that involved the fabrication of official seals, documents, arrest warrants, samples of the emperor's calligraphy, official edicts, and tax receipts. Each chapter methodically describes the technical details involved in these various forms of forgery and impersonation, and explores the identities and characteristics of various offenders—what their objectives were likely to have been, how their crimes were discovered, and how the state treated them following their capture.

In the first few chapters, McNicholas focuses on cases of extremely bold impersonations and explains Qing impersonators' successes by exploring the larger political context in which they operated. One example involved an individual who, in 1715, travelled around China claiming to be on a mission for the Third Imperial Prince, and used this cover story to obtain exclusive rights and gifts from local officialdom and governors. In analyzing this episode, McNicholas explains the imposter's likely motivations (he simply sought to enjoy an extended holiday in the provinces) and provides detailed historical insight into how and why the period's larger political context made the imposter's claims reasonable for local officials to believe. He also underscores that these impostures exploited and illuminated the weaknesses in the system of bureaucratic control and ruling structure upon which the kingdom depended, and explores the profound frustration—and consequential actions—they inspired among China's emperor and other officials. To this end, the book highlights the official

records that convey the emperor's urgency to punish the perpetrator of this deception (he was later sentenced to death by slicing) and the resulting edict issued to govern future contact between princes and provincial officials. Ultimately, McNicholas contends that the abundance of archived accounts of impersonations crimes from early eighteenth century China reveal unique features of the period's social and political environment.

As the first chapters progress, McNicholas probes the regularity of impersonations in the Yongzheng period and portrays these deceptions as a result of political struggles, the emperor's religious inclinations, and the distinct features of the emperor's relationship with China's provincial bureaucracy. In underscoring the multitude of factors that contributed to the over twenty instances of high-level deceptions in which individuals claimed to be on a special mission for a prince or the emperor, McNicholas details the occupational and social diversity of the perpetrators; the list surprisingly included monks, eunuchs, a merchant, a fortune teller, a bandit leader, an escaped convict, as well as individuals of many other backgrounds. Having established the perpetrators' diverse backgrounds, McNicholas devotes a good deal of these chapters to exploring the motivations and goals of impersonators and detailing the means they used to perpetrate these hoaxes. In particular, he details how, driven by their desires for prestige and money, as well as their need for food, clothing, and accommodations, perpetrators committed their impersonations through propagating false claims, exploiting bureaucratic weaknesses, and forging various forms of credentials. Through insisting that most impersonators were motivated by a desperate need for life's necessities, McNicholas rationalizes their crimes as products of their social context and positions.

Chapter Five takes a step back and explores the criminal act that enabled many of these deceptions—forgery. Highlighting that the crime of forgery was more common than impersonation during this period, McNicholas surveys 181 cases of forgery and describes the various motivations that inspired these crimes, the political and social climates that facilitated their regularity, and the technical means through which they were perpetrated. McNicholas reports that individuals forged everything from travel permits, tax receipts, salary vouchers, and arrest warrants, to official directives, imperial edicts, and

communications between government officials. Beyond presenting detailed accounts of various forms of forgery motivated by diverse objectives, McNicholas meticulously details the practical, artistic, and technical skills and methods employed in perpetrating forgery during this period.

While, throughout the book, McNicholas demonstrates different ways in which Qing China's economic and social contexts contributed to the perpetration of various forms of deception, his clearest example of this appears in Chapter Six. In exploring the prevalence of forgery as it pertained to the sale of official rank and licenses throughout the period, the chapter distinctly links impersonation and forgery to a cultural institution specific to Qing China: the sale of official ranks. A time-honored means of raising revenue in times of need, the Qing government sold ranks, offices, and ceremonial licenses that conferred greatly desired status and privileges to contributors. Although the forgery of these licenses was treated as a serious misappropriation of dynastic authority, McNicholas illustrates how criminals nonetheless capitalized on the existence of this system and commoners' socially driven desire for status through the successful (and sometimes not) sale of forged ranks and licenses.

After making only brief anecdotal references to the Qing legal codes that governed crimes of deception in the book's first six chapters, McNicholas comprehensively examines these codes in the book's last chapter. In particular, McNicholas traces the emergence and development of the laws governing impersonation and forgery in Qing China and argues that the codes' gradual evolution demonstrates the changing conceptions of crime and punishment during this period. McNicholas observes that as the regularity of these crimes increased in the eighteenth century, and newer variations of these crimes emerged, statutes steadily expanded to incorporate and clamp down on perpetrators. Moreover, as individuals who perpetrated impersonation and forgery crimes became regarded as severely infringing authority, undermining government, and harming common people, new Qing legal codes consistently prescribed a high price for these deeds. Often, statutes imposed punishments that varied based on the seriousness of crime, purpose of the deception, number of victims, and the amount of money obtained through the enterprise. Given the vast political implications of all forms of impersonation and

forgery, however, it was not uncommon for statutes to recommend death sentences in even seemingly minor cases. Overall, McNicholas contends that the evolution of impersonation and forgery statutes reveals an official approach to a changing criminal environment that in turn reflected general trends in Qing China.

Forgery and Impersonation in Imperial China is a unique work that expands readers' perspective of Qing law, authority, and society. Yet, readers looking for exhilarating tales should not be misled by the mystique of the book's topic and title. The work's apparent objective—and means of presentation—is to academically survey and summarize archived case files, not to engross readers in stimulating tales that pique their imaginations. Nonetheless, the book is a unique and intellectually captivating work that makes a significant contribution to Qing studies. Through presenting and analyzing strikingly extensive archival research that reveals the extent to which impersonation and forgery were distinct features of Qing China's criminal landscape, McNicholas's work highlights significant weaknesses in the ruling structure of a government traditionally viewed as a paragon of political stability and administrative efficiency. In exploring this unique dimension of Qing China in which individuals' pursuit of resources and coveted status posed fundamental challenges to political authority, McNicholas's work refines readers' perspective on Qing society by edifying crucial dimensions of the period's social and political life.